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PATENT

Customer No. 22,852

Attorney Docket No. 06530.0313-00000



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Christopher D. ENDARA et al.

U.S. Patent No.: 7,534,253 B2

Issue Date: May 19, 2009

Application No.: 10/731,153

Filed: December 10, 2003

For: CLEVIS ASSEMBLIES FOR  
MEDICAL INSTRUMENTS AND  
METHODS OF MANUFACTURE OF  
SAME

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) Group Art Unit: 3734

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) Examiner: Kevin Thao Truong

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) Confirmation No.: 4806

**BOX: PETITIONS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

**REQUEST FOR RECONSIDERATION OF PATENT  
TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)**

In accordance with 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment of the above-identified patent. This Request is being filed within two months of issuance of the above patent, as required by 37 C.F.R. § 1.705(d), and includes a statement of fact pursuant to 37 C.F.R. § 1.705(b)(1).

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**I. Statement of the Facts Involved**

**A. Correct Patent Term Adjustment**

According to information printed on the face of the above-identified issued patent, U.S. Patent No. 7,534,253 B2 (the '253 patent), this patent is entitled to 758 days of patent term adjustment.

Applicants have calculated a patent term adjustment of 1012 days, i.e., 254 additional days, based on the following facts:

The application for this patent was filed on December 10, 2003. The first non-final Office Action on the merits was mailed on April 3, 2007, creating a U.S. Patent and Trademark Office (PTO) delay of 782 days beyond the 14 months provided by 35 U.S.C. § 154(b)(1)(A)(i). A response to the April 3, 2007 Office Action was filed July 3, 2007, resulting in no reduction in patent term adjustment. A final Office Action was mailed on August 20, 2007, resulting in no increase in patent term adjustment. An Amendment and Request for Continued Examination (RCE) under 37 C.F.R § 1.114 was filed on December 13, 2007 in response to the August 20, 2007 final Office Action, resulting in a delay by Applicants of 21 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2)(c)(ii).

A second non-final Office Action was mailed on January 10, 2008, resulting in no increase in patent term adjustment. A response to the January 10, 2008 Office Action was filed on April 14, 2008, resulting in an additional delay by Applicants of 4 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2)(c)(ii). A second final Office Action was mailed on July 14, 2008, resulting in no increase in patent term adjustment. A response to the July 14, 2008 final Office Action was filed on September 11, 2008,

resulting in no reduction in patent term adjustment. A Notice of Allowance was mailed January 12, 2009, resulting in a PTO delay of 1 day beyond the 4 months provided by 35 U.S.C. § 154(b)(1)(A)(ii).

The issue fee was paid on April 9, 2009, and the '253 patent issued on May 19, 2009.

Under *Wyeth v. Dudas*, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) begins to toll three years after the filing date of the application, i.e., three years from December 10, 2003. Thus, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) began to toll on December 10, 2006, and ended with the filing of a Request for Continued Examination (RCE) on December 13, 2007, resulting in 368 days of PTO delay under the three-year pendency rule. Of which, 114 days exceeding the three-year pendency date overlap with the earlier 782 days of PTO delay. Accordingly, the PTO delay under the three-year pendency rule is 254 days (368-114 = 254 days).

*Wyeth v. Dudas* instructs that the 254 days of PTO delay under the three-year pendency rule provided by 35 U.S.C. § 154(b)(1)(B) should be counted in addition to the PTO examination delay of 783 days under the 14 month delay provided by 35 U.S.C. § 154(b)(1)(A)(i) and 4 month delay provided by 35 U.S.C. § 154(b)(1)(A)(ii) offset by 25 days of Applicants' delay. Accordingly, the total of PTO patent term adjustment based on delay is 1012 days. Applicants respectfully request that the current patent term adjustment be reconsidered.

#### **B. Terminal Disclaimer**

The above-identified issued patent is not subject to a Terminal Disclaimer.

**C. Reasonable Efforts**

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified issued patent, as set forth in 37 C.F.R. § 1.704, other than those identified above.

**II. Fee**

As required by 37 C.F.R. § 1.705(b)(1), this Request is accompanied by the required fee of \$200.00. If there are any additional fees due in connection with the filing of this Request for Reconsideration of Patent Term Adjustment, please charge them to Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: June 22, 2009

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